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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DAVID TARVER,

12 Petitioner,

13 v.

14 MAGGIE MILLER-STOUT,

15 Respondent.

16 Case No. C06-5577 RJB/KLS

17 REPORT AND
18 RECOMMENDATION

19 **NOTED FOR:**
20 December 29, 2006

21 This habeas corpus action has been referred to United States Magistrate Judge Karen L.
22 Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and MJR 4. Petitioner filed
23 this action under 28 U.S.C. § 2254 challenging the revocation of his sentence under the Special Drug
Offender Sentence Alternative (DOSA). (Dkt. # 5). The Court's records reflect this case to be
duplicative of issues raised previously by Petitioner in Tarver v. Miller-Stout, Case No. 05-
5802FDB. Accordingly this petition is successive and this file should be administratively closed and
the case transferred to the Ninth Circuit in accordance with Circuit Rule 22-3(a).

24 **DISCUSSION**

25 Ninth Circuit Rule 22-3 (a) states:

26 (a) **Application**. Any petitioner seeking leave to file a second or successive 2254
27 petition or 2255 motion in district court must seek leave under 28 U.S.C. §§

28 REPORT AND RECOMMENDATION

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2244 or 2255. An original and five copies of the application Must be filed with the Clerk of the Court of Appeals. No filing fee is required. If a second or successive petition or motion, or application for leave to file such a petition or motion, is mistakenly submitted to the district court, **the district court shall refer it to the court of appeals.**

(Emphasis added).

The Petitioner is filing a successive petition challenging the same issues. Petitioner's previous challenge was dismissed. *See, Tarver v. Miller-Stout*, Case No. 5-5802FDB. Clearly, the instant petition should be treated as a "second or successive" petition and should be transferred.

CONCLUSION

Accordingly, the Court should transfer this habeas corpus petition as a second or successive petition and administratively close the file. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **December 29, 2006**, as noted in the caption.

DATED this 30th day of November, 2006.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge